



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROGER AND HARRIET CUNNINGHAM)

OPINION ON PETITION FOR REHEARING

On September 1, 1966, we sustained the action of respondent Franchise Tax Board on the protest of appellants Roger and Harriet Cunningham against a proposed assessment of additional personal income tax in the amount of \$3,615.87 for the year 1954. A timely petition for rehearing has been filed by appellants pursuant to *section* 18596 of the Revenue and Taxation Code:

In our prior opinion we held that where appellants purchased property which served as security for the purchase price and a subsequent loan, both obligations being evidenced by nonrecourse notes executed by appellants in favor of the seller, taxable income was realized by appellants when they transferred the property back to the seller. Appellants, in their petition, primarily contend that we should have ruled as to the propriety of an alleged proposition of law that when the disposition of property to the creditor results in cancellation of indebtedness, the amount of taxable gain is limited to the net assets of the debtor after the cancellation.

Appellants previously argued that where a taxpayer was insolvent before and after a cancellation of indebtedness resulting from a disposition of property, there was no realization of income. They also argued that if a taxpayer was insolvent before the disposition of property but was made solvent, as a result thereof, the taxpayer would realize income only to the extent the assets exceeded liabilities immediately after the disposition. These arguments were disposed of in our prior opinion by the finding that insufficient evidence was presented to show insolvency, "assuming, without deciding, that appellants' solvency or insolvency is relevant here."

Appellants have not cited any case nor have we discovered any in which income -upon the disposition of property

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securing a nonrecourse obligation was held to be limited by the amount of the net assets of a transferor who was solvent to any extent before the transfer. The Appeal of Rocco M. and Josephine M. Matteucci, Cal. St. Bd. of Equal., Oct. 8, 1954, cited by appellants, involved former section 17191 of the Revenue and Taxation Code. That section, which was in effect during the year here in question, provided:

If the indebtedness of a taxpayer is canceled or forgiven in whole or in part without payment, the amount so canceled or forgiven constitutes income to the extent the value of the property of the taxpayer exceeds his liabilities immediately after the cancellation or forgiveness

The transfer under the circumstances of appellants' case of property securing nonrecourse obligations does not, in our opinion, result in a cancellation or forgiveness of indebtedness without payment within the meaning of section 17191.

All other contentions made in the petition for rehearing were thoroughly reviewed and disposed of in our prior opinion.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, AD JUDGED AND DECREED, pursuant to section 18596 of the Revenue and Taxation Code, that the petition for rehearing of the appeal of Roger and Harriet Cunningham from the action of the Franchise Tax Board on their protest against a proposed assessment of additional personal income tax in the mount of \$8,615.87 for the year 1954, be and the same is hereby denied and that our order of September 1, 1966, be and the same is hereby affirmed.

Done at Sacramento, California, this 23rd day of November, 1966, by the State Board of Equalization.

Geoff Kewley, Chairman
John W. Lynch, Member
Paul R. Leake, Member
Paul H. Hearn, Member
_____, Member

ATTEST: J. H. Hearn, Secretary